

Mirza Na'ini and the Scope of the Government's Jurisdiction and Duties

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Abstract

The question on the government's duties and the scope of its qualifications is a question posed since long ago by political and legal thinkers. Mirza Na'ini has not spoken on this subject independently; however, we may extract some ordered speeches and precise plan from his intellectual system. Since Na'ini would consider constitutionalism as limiting the power, he would attempt not to define unlimited duties for the government. In his view, the government's duties are restricted to two basic principles. First, protecting domestic order of the country and prohibiting people from transgressing one another's rights; and second, protecting the frontiers against strangers. Accordingly, for him, we face a government with limited and minimal duties, a government that has no permission to interfere in all affairs. This approach taken by Na'ini is different from many of his predecessors and descendants. Indeed, we see a deep innovation in projecting the issue of the government's duties in

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his thought. This article uses a descriptive-analytical method to answer the following questions: “What are the government’s duties in Na’ini’s thought?” and “What innovations has he offered in this regard?” Considering his speeches, here we try to investigate the idea of the duties and jurisdiction of the government in general in two types of government in the thinking system of this constitutionalist jurist: i.e. *wilāyatiyya* and *tamlikiyya*. Besides, we attempt to discuss some of the expressions that Na’ini has employed for explaining this discussion, including ‘truth of sultanate’ as well as concepts such as ‘trust’ and ‘endowment’ for explaining the government’s duties.

Keywords

truth of sultanate, government, constitutionalism, Na’ini

Introduction

The constitutional movement was the starting point for a legal modernity, formation of the modern state and the most important event in Iran of the modern age. However, not all of its aspects have been explored yet. This victory was under the influence of various factors including economic factors, political despotism, thinkers' opinions and the like. Ample theoretical and practical contemplations were done to make Iranian constitutionalism victorious. One of the important aspects of that movement was the theoretical contemplations put forward by the great personages of constitutionalism of Iran, which have not been dealt with enough so far. Among the theoretical contemplations of the thinkers in that era, the jurists – since they were more familiar with the traditional concepts of Islam and Iran – could have more precise contemplations on the fundamental concepts of constitutionalism. Na'ini was the hero of theorizing Iranian constitutionalism on the basis of Shiite thoughts and could design a foundation for entering the new era of Iran by relying on tradition. That is, his work was jurisprudential innovation on the basis of jurisprudence and principles of jurisprudence for inferring just sultanate from religious texts with a jurisprudential approach (Tabataba'i-far, 1388 SH, p. 103). In this article, we deal with one of the aspects of this great jurist's thought. This article seeks to answer the question about the duties and scope of latitude of the government in Na'ini's thought. There has been no independent article or study; rather, some of the authors have shortly referred to this issue in their exposition of Na'ini's opinions. The necessity to investigate this issue is that there are sparse and excursive statements on the scope of government and state's latitude offered by Iranian-Islamic thinkers. That the states have reduced in size and their scope of latitude is diminishing shows the inefficiency of a big state with limitless duties and latitude; and this doubles the importance of the statements offered by Na'ini and the like. The

innovation of this study is in dealing with an issue that has been less considered by researchers and also in explaining some of Na'ini's innovations such as the truth of sultanate, the principle of establishing sultanate, and religious necessity of limitation of power. The structure of this article is as follows: first, we deal with the necessity of government in the thinkers' thought. Then, two of Na'ini's terminologies in explaining the government's duties, i.e. the truth of sultanate and the principle of establishment of sultanate are explained, and that Na'ini maintains the limitation of government's power is religiously necessary. In the next section, we deal with Na'ini's division of various types of government and what duties Na'ini defined for these governments. At the last step, we will deal with the role people can play in performing governments' duties.

1. The necessity of having a government

Since ancient times in Greece, numerous authors have stressed on the point that the human society needs government. Aristotle believed that the man is a social animal and needs to live in community under a government, and that the basic goal of establishing a government is the humans' sublime goodness (Aristotle, 1981, p. 1). In his view, goodness is the ultimate end because of which everything exists (Aristotle, 1981, p. 5), and that city is the only society capable to fulfill all needs of the people and the greatest goodness. In Iran, many authors of the Islamic period have stressed that any nation inevitably needs government, and have referred to the philosophy of government. From lexicological point of view, the word *ḥukūmat* (meaning 'government') comes from the root *ḥukm* meaning "establishment, stability, strength and hindering corruption" (Ragheb Isfahani, 1416 AH, s.v. *ḥukm*). This meaning is running in all its instances and derivations including the words *aḥkām*, *ḥikmat* and *ḥukūmat* (Tabataba'i, 1393 SH, vol. 7, p. 267). In political terminology, government (*ḥukūmat*) is the whole system that administers the

country. In the Quran, this term means “distinguishing truth from falsehood” and “judgment”, and in the Islamic tradition, it means judgment.

All the time, Muslims have referred to the necessity of having a ruler, and in the Shiite tradition, Imam Ali is quoted as having said, ‘people must necessarily have an emir, whether righteous or impious’ (for an analysis of this hadith, see: Qasemi, 1390 SH). The Islamic philosophers, just as their Greek predecessors, have also emphasized the need for government. In Farabi’s view, the government’s goal in *madīna fāḍila* (i.e. utopia) is providing felicity for people, which is not achieved except by public acting according to law. In his view, achieving felicity and realization of virtues is not possible without a government (Tabataba’i, 1385 SH, p. 153). He believes that not anyone can become the ruler of the utopia, and there must be a knowledgeable wise man (Farabi, 1354 SH, p. 246). Some other philosophers such as Sohrawardi believe that “government must be at the hands of the prophets or a special type of wise philosophers” (Sohrawardi, 1380 SH, vol. 1, p. 95). Allamah Tabataba’i, among the contemporaries, believes that government is among the necessary conventional ideas that the man needs (Tabataba’i, 1393 SH, vol. 7, p. 197). He maintains that the goal of government is leading people towards perfection (Mirkhalili, 1399 SH), and explains the necessity of establishing government on the basis of the verse *fiṭrat* (meaning ‘innate nature’) (Tabataba’i, 1341 SH).

Na’ini also would speak in the same line and maintained that government is a necessity in human life; however, his attention to the new organization caused him to have precise contemplation in this regard. In a deep statement on necessity of establishing a government, Na’ini writes, “for all nations and the wise men of the world, the strength of the order of universe and the human life are dependent on a sultanate and politics, whether established on one person or a collection of persons, and whether legitimate or usurped, inherited or

selected. It is necessarily known that preserving a nation's honor and independence – whether regarding the religious privileges or patriotic ones – is dependent on establishing their government on their own. Otherwise, the privileges and the great prestige, religion and denomination as well as the honor of independence of their homeland and ethnicity will be ruined altogether, even though they may have reached high degrees of wealth and prosperity” (Na'ini, 1380 SH, p. 23). He believes that firstly the strength of the world and human's life needs worldly sultanate and no nation can keep on his life without government. Secondly, that one person administers this type of government or a group of persons makes no difference. Thirdly, that the ruler has gained the office legitimately or through usurpation or inheritance or selection makes no difference. He believes that if some nation lacks government, even if they have the highest degree of wealth and prosperity, they will be ruined. He, then, goes to the foundation of government and philosophy of its creation.

2. The principle of establishing sultanate and truth of sultanate

The philosophy of establishing government is the first step in understanding the duties of the government. Na'ini uses two terms to explain this fact: “principle of establishing sultanate” and “truth of sultanate”. As one of the researchers believes, Na'ini means government in its modern sense when he speaks of ‘sultanate’. However, he has not used the word *ḥukūmat* (meaning ‘government’), because firstly *ḥukūmat* means judgment in the jurisprudential terminology and he did not want to mix up these two terms; and secondly, in the literature before constitutional period, *ḥukūmat* had a more limited sense than the word ‘sultanate’, also referring to the ruler and governor (Firahi, 1394 SH, p. 198).

Na'ini believes that “the establishment of sultanate and order of powers and specifying taxes all are for protecting the order of the

country and nurturing the subjects, not for judging the lusts and perceiving the purposes of cannibal wolves and conquering and subjugating the nation under the despotic arbitrary wills. Thus, inevitably, the normal sultanate, for any religion and even for any wise person, is – whether legitimately or by usurpation – safekeeping the species and preserving the authority over order and establishing other duties pertaining to guarding, not for dominance and possession and arbitrariness” (Na’ini, 1380 SH, p. 55). These statements contain important points. According to Na’ini, the three issues of ‘sultanate’, ‘order of powers’, and ‘specifying taxes’ are all in one sphere, because all of them are essential tools for governance and are at the service of the government for performing its duties. Those duties are as follows: preserving the order of the country, shepherding the herd, nurturing the species, and observing the subjects’ rights. In other words, the duties of the government are not limitless. In those statements, Na’ini again emphasizes that firstly these duties are obligatory for any government, whether it gained power legitimately or by usurpation. Secondly, the philosophy of government is for performing these four duties, not for fulfilling the rulers’ passionate desires. And thirdly, the foundation of government is for safekeeping the species and authority for preserving order and performing some certain duties, not for possession. *Tanbih* is full of examples of Na’ini’s writings in opposition to the government that behaves people and the state as a personal property. Na’ini believes that the government who claims ownership has usurped God’s position and its actions oppose the prophet’s goals (Na’ini, 1380 SH, p. 56).

Unlike the phrase ‘principle of establishing sultanate’ that appears in *Tanbih* just once, the phrase ‘truth of sultanate’ appears *passim*. Somewhere, he writes, “the principle is management of endowment affairs for keeping them in order and preserving the common endowments and giving the rights to the owners, not for arbitrary

possession and personal appropriation; and this is why the imams and Muslim scholars have called sultan *walī*, *wālī* or *rā'ī* and the nation *ra'īyyat*. That is, the truth of sultanate is authority over preserving the order and shepherding the herd” (Na'ini, 1380 SH, p. 56). Here, he considers the truth of sultanate as a type of authority not ownership, and uses the threefold expression of ‘herd, shepherd and owner’ to explain the relationship between people and the government, considering God as the true owner. Just as the shepherd of a herd has no ownership over the flock, and the owner of the herd has entrusted it to him as a trust, and the shepherd must protect the entrusted flock, the government is not the owner of the people and the true owner of them is God. Here, Na'ini's statements remind us of what his master, Akhoun Khorasani, stated and considered God as the true owner and people elsewhere (Moradkhani, 1399 SH, p. 152). In a very important letter addressed to the scholars in ‘protected lands’, Akhoun wrote, “In the protected lands, the owner of the country is the nation as deservers and as the principal owners; and the reality of the council (*dār al-shūrā*) is entrusting this ownership to the representatives and granting them the absolute possession of affairs for a certain period of time.” (Khorasani, 1385 SH, pp. 158-288). Secondly, Na'ini maintains that authority is limited to merely preserving order, not to all spheres. Na'ini's reference to the endowment contract in explaining the philosophy of creation of government is among the brilliant points of his thought. Just as in the endowment contract, the endowed item must be used in certain affairs, and an individual acts as the trustee of the endowment, the government is like an endowed property and the ruler is its trustee, with no right to transgress in it. Referring to expressions and metaphors such as shepherding and endowment contract is for stressing on the point that government has no ownership right over the people and the country.

Elsewhere, he uses the expression ‘truth of sultanate’. Here, regardless of the fact that the government is Muslim or non-Muslim,

he emphasizes that the foundation of sultanate is trusteeship, and it must not be turned into ownership (Na'ini, 1380 SH, p. 29). It seems that where Na'ini uses the phrase "truth of sultanate", he considers the government regardless of its being religious or non-religious, and believes that the truth and basis of any sultanate is free from any restrictive stipulation. He makes use of the phrase 'truth of sultanate' along with other words. Somewhere, he deals with the truth of sultanate in Islamic countries and explains it by the phrase 'truth of Islamic sultanate'. In other words, the truth of sultanate is the same everywhere, but in various countries, there may be other items added to the truth of sultanate. He writes, "the truth of Islamic sultanate is authority over policing the affairs of nation and is much limited. Its basis – considering the participation of all members of the society in the country's typical affairs – is founded on consultation with the intellectuals of the nation, who are the members of the parliament (not just the close associates of the ruler, called the council of the court). And this consultation was – according to the Quran and the Prophet's *sunnah* – among the definite ideas of Islam up to Mo'awiya's time" (Na'ini, 1380 SH, p. 73). This point asserted by Na'ini is important from some aspects. He believes that the Islamic sultanate has authority just over the political affairs, and since in the Shiite jurisprudence the principle is non-authority (see: Soroush Mahallati, 1383 SH; Taherinia, 1394 SH), this type of government is much limited. And in this limited type of government, all members of the nation participate in these typical affairs and no one can be prevented from this participation, and the wise members of the nation must be consulted in important matters. The example of this consultation is, for Na'ini, the National Assembly. He believes that the government is not to be restricted in a narrow circle, and just the king and his associates be consulted. This way of governing was running under the Prophet and the four first caliphs, and all people had the right to take part in the affairs of the country.

Since the time of Mo'awiya, however, this Islamic tradition sank into oblivion. According to a statement in Na'ini's thought, the truth of government in Islam has some features: (a) it is authority-centered and trust-centered; (b) it is proprietary, limited and minimal; (c) it is participatory and consultative; and (d) it was enforced until the Great Caliphs (Firahi, 1394 SH, p. 249).

He uses another expression under the title of "truth of sultanate in Islam and other religions". According to him, "the truth of sultanate fabricated in Islam and other religions, and even for non-sacred philosophers and scholars of the old and new worlds, all are fabricated from the secondary perspective [i.e. authority], and returning it to the primary aspect is absolutely from the innovations of the oppressive tyrants of the nations and eras." (Na'ini, 1380 SH, p. 48). Here, he refers to two types of government, i.e. possessive and authoritative, and proclaims that the truth of sultanate in all religions – and even in non-religions – is the authoritative sultanate, and anyone who wants to turn it to possessive type not only has done a heretical innovation but also is one of the tyrants. Elsewhere, he employs the same expression and writes, "reference of the truth of the Islamic sultanate – and even all religions – to the trusteeship and authority of one of those who share the typical common rights without any privilege for the responsible person and its limitation in turning into despotic imperative and arbitrary force is among the most evident essential laws of Islam, and even all religions" (Na'ini, 1380 SH, p. 57). Here, he reemphasizes that the government is of the authority and trusteeship type, and he adds just one other point: the limitation of power is among the essential ideas in Islam.

The reason why Na'ini uses the word 'truth' probably arises from his knowledge of 'principles of jurisprudence'. In the principles of jurisprudence, numerous classifications have been offered regarding

the concept of truth, including the legal truth, the conventional truth and the lexical truth (Firahi, 1394 SH, p. 249). Whenever a word finds its truth in a sense for the public, it is called conventional truth. For instance, *dābba* means ‘mover’, but conventionally it means a four-footed animal or beast (a group of researchers, 1389 SH, vol. 1, p. 426). And specifying a term for a certain meaning by the legislator is called legal truth. The legal truth is among the specific conventional truths and it means specifying a term by the legislator for a particular meaning (a group of researchers, 1389 SH, vol. 1, p. 426). In other words, it is when the figurative usage of a term by the religious law (*sharʿ*) is to the extent that its main lexical meaning is forgotten. For instance, the term *ṣalāt* (meaning ‘prayer’) had another meaning before Islam, but its old meaning was gradually forgotten. The important point to note here is that Naʿini, in his opinions regarding the principles of jurisprudence, maintains that discussions about the legal truth are practically fruitless. He believed that the words for transaction and government have no religiously legal truth, and Islam has confirmed them in their very conventional meaning (Firahi, 1394 SH, p. 246). Accordingly, in his view – like many other early jurists – not only the government does not fall under the class of worships, but also the expressions ‘truth of government’ and ‘the truth of Islamic sultanate’ in *Tanbīh* have nothing to do with the religious truth and the innovative essences of *sharʿ* (Firahi, 1394 SH, p. 248). In his book entitled *Badāyiʿ al-Afkār*, Mohaqqueq Rashti has emphasized that Naʿini maintains the truth of government is the general conventional truth, and that the government is both limited and responsible (Firahi, 1394 SH, p. 248).

3. Limitation of the government’s power and necessity of religion

Naʿini’s goal in *Tanbīh* is to show the limitation of power. In his view, the nature of government consists of two things: (a) limitation of

dominance of the fabricated sultanate in all religions and (b) discovering the degree of this limitation (Na'ini, 1380 SH, p. 53). Thus, passim in *Tanbih*, he emphasizes this fact and goes so far as to say he considers the limitation of power among the essential ideas in Islam. He believes that “preserving that degree of limitation of Islamic sultanate, agreed upon by the nation and considered among the essential ideas of Islam, and protecting the foundation of consultation –known as definite and fixed and textually confirmed in the Quran and the sacred Sunnah – is not possible except by placing external obstacles” (Na'ini, 1380 SH, p. 77). According to him, there is no doubt that government is limited in Islam and this limitation is among the essential ideas in Islam; and there must be external obstacles for the ruler and the government to prevent its motion towards ownership. Na'ini also poses the following question: “in the occultation period when we have no access to the Infallible, and the lieutenancy of the general deputies is usurped and non-accessible, is it obligatory to shift it from the primary mode – which is oppression and ultimate usurpation – to the secondary mode and limiting the oppressive dominance as far as possible?” Or “does the usurpation of an office lead to removal of these obligations?” (Na'ini, 1380 SH, p. 48). This is a very important question. As we know, in the occultation period, all governments are – in the traditional Shiite thought – oppressive and usurper. According to Na'ini, does the fact that all governments are usurper cause the duties of government not to be important for the Shiites? Na'ini believes that all those duties are in their place, and in the second chapter of *Tanbih*, he deals with limitation of government in the occultation period.

The discussion that constitutionalism of government and its limitation are among the essential ideas in Islam is a new point put forward by Akhoun Khorasani and Na'ini. Religiously essential ideas are a part of religious laws in the Shiite scholars who are experts in principles of jurisprudence. These are religious laws and beliefs whose axiomatic

nature is proved on the part of the legislator. Among the essential laws in Islam are prayer, fasting, hajj and zakat (religious tax). It seems that this term become common after Mohaggeq Helli and is supported by a hadith from Imam Musa Kazem (Abbasi et al., 1399 SH). According to the Shiite jurists, there are no reasoning and imitation in the essential laws of religion, and when its denial leads to denial of monotheism and prophethood, it is infidelity (Firahi, 1394 SH, p. 214). Regarding the instances of this concept, there is disagreement among the jurists (Firahi, 1394 SH, p. 248). Akhound and Na'ini have enumerated new instances for it. In his letters, Akhound Khorasani has considered limitation of power among the instances of essentials of religion. Akhound maintained that limiting the dominance and shortage of despotic appropriation of the officials from the arbitrary non-religious commitment as far as possible and obligation of making effort in limiting dominance and shortage of appropriation, to any possible extent, among "the most essentials of religion" (Khorasani, 1358 SH. P. 207). Similarly, he has emphasized that "it is an essential idea in [Shiite] denomination that Muslim government in the occultation period belongs to the public Muslims" (Khorasani, 1385 SH, p. 204). In three points of his book entitled *Tanbih*, Na'ini emphasizes that limitation of sultanate is one of the essentials of Islam. He writes, "The Islamic sultanate is not having dominance; and – if we ignore the qualification of the attendant and imamate in Shiite jurisprudence – this is one of the essentials of Islam and there is consensus among denominations regarding it" (Na'ini, 1380 SH, p. 60). He writes elsewhere in *Tanbih*, "limitation of the Islamic sultanate" (Na'ini, 1380 SH, p. 68) and "limitation of sultanate" are among the essentials of Islam (Na'ini, 1380 SH, p. 77). Na'ini maintains that if we believe imamate is the right of a certain person and – ignoring the disagreements among various denominations of Islam regarding the government – there is a common point among them, and that is 'the government must be limited'.

4. The government's main duty

Na'ini showed that government is essential for human life and sultanate has one truth, and the truth of Islamic sultanate and truth of sultanate in Islamic countries and other religions are not far from it, and all rotate around the axis of authority, trusteeship and limitation, and he regarded this limitation among the essentials of religion. In the next step, he attempted to define the duties of the government. Previously, we pointed out that Na'ini has referred to the government's limited duties in the discussion on philosophy of creating government. These duties include: preserving the order of the country, shepherding the herd, nurturing the species, and observing people's rights. Elsewhere in *Tanbih*, however, he explicitly deals with government's duties. He believes that the government has two main duties: "first preserving the systems inside the country, nurturing the species, and giving anyone his rights, and preventing some individuals' transgression on others are among the typical duties regarding the internal issues of the country and nation. Second is protecting the country from the strangers' interference and avoiding typical tricks in this regard, and preparing the defensive power and warfare preparations, which is called – by religious people – protecting the egg of Islam, and in other nations, is called protecting the homeland. The laws specified for performing these two duties in the purified *shari'a* are political and civilized laws, and are regarded the second part of the practical philosophy" (Na'ini, 1380 SH, p. 24). In this way, Na'ini believes that the government's duties are just in two spheres: protecting the internal order and defending the borders of the country or preserving the egg of Islam. Preserving the egg of Islam was posed in the jurisprudential literature regarding jihad and political jurisprudence (Firahi, 1394 SH, p. 106). According to Na'ini, in the purified *shari'a* of Islam, preserving the egg of Islam has been regarded as one of the most important affairs (Na'ini, 1380 SH, p. 24). The alteration in this

concept in Akhound and Na'ini's thought – returned to protection of the homeland – is an important point referred to by some researchers (Hatami and Aqajari, 1393 SH; Tabataba'i, 1386 SH, pp. 520, 571-572).

He believes that there are laws in *shari'ā* of Islam for exerting and enforcing these two important duties. These laws are called *aḥkām siyāsiyya* (political laws) and *aḥkām tamaduniyya* (civilization laws). They are the second part of practical philosophy. Besides, “the serious effort made by earlier sultans in Iran and Rome for choosing philosophers and perfect men in knowledge and practice for ministry and taking over the affairs as well as their acceptance with perfect piety from dominant superiority was for this purpose. Rather, the initial point of establishing sultanate and specifying taxes as well as order of other typical powers – whether from prophets or philosophers – all were for performing these tasks and managing these affairs” (Na'ini, 1380 SH, p. 24). He believes that in Islam, the political laws, civilizational laws and the practical philosophy are for performing these two tasks. And for explaining and justifying this point, he refers to the governments before Islam, i.e. the Iranian and Roman governments. He maintains that one of the reasons for their success was that they would entrust this important task to qualified persons, and those personages would also accept that responsibility. He believes that creating any government is for performing these two tasks and *shari'ā* of Islam is the continuation of that tradition and completion of the defects of other religions and governments.

From the duties of three branches of government, Na'ini referred just to the duties of the National Assembly (legislature branch), because he maintained that the Assembly was the most important pillar of the constitutional system. He believed that the duties of the representatives of the nation are also limited and they are not to interfere in everything. The first duty of the Assembly is recording and modifying the taxes as well as adjusting the incomes and expenses

of the country, or protecting the regime and protecting the egg of Islam, which is impossible except by ordering the disciplinary and police forces as well as doing the domestic and frontier preparations. And all these require modification of taxes and preserving them from being wasted through personal willingness and tyrannical wishes (Na'ini, 1380 SH, p. 115). The second duty of the Assembly is enacting laws and adjusting them with *shari'ah* (Na'ini, 1380 SH, p. 122).

A weird point in Na'ini's thought is that – unlike Islamic philosophers – he never speaks of who must be the ruler; and unlike the jurisprudential tradition that regards the government among pillars of religion, he does not deal with this subject. The contemporaries believe that the most important goal of the Islamic government consists of two things: (a) guiding people towards God's vicegerency and preparing the ground for it; and (b) turning the Islamic country into a utopia, preparing the ground for true civilization and explaining the rules governing the domestic and foreign relations (Jawadi Amoli, 1387 SH).

5. Duties of various types of government

The constitutionalist jurists have offered classifications of various types of government (Moradkhani & Aazami, 2020). Akhond Khorasani divides government into two types: legitimate and illegitimate. He believes that just the Infallible's government is legitimate and those government administered by non-infallibles are illegitimate. The latter group consists of two types: (a) just sultanate, like constitutionalism wherein the wise and pious individuals in general are the managers of affairs; and (b) oppressive sultanate wherein one despotic person is the absolute ruler (Thobout, 1395 SH, p. 21; Khorasani, 1385 SH, p. 214). Mohammad Isma'il Mahallati divides government into three types. The first type is "the despotic absolute sultanate wherein the people have no freewill and no right" and serve as servants for the king; in other words, they are instances of the rule "the servant and what he possesses belongs to

the master". They have no right to pose any objection. The second type is the absolute sultanate (i.e. the Infallible Imam's sultanate) wherein people – while they have no participation – enjoy some typical rights. The foundation for caliphate of the trustees of the Prophet and imams' sultanate is this type (Mahallati, 1390 SH, p. 203). The third type is the constitutional government (Mahallati, 1390 SH, p. 212).

In classification of various types of government, Na'ini mentions two types: *tamlīkiyya* (possessive) and *wilāyatiyya* (authoritative). This classification seems to be Na'ini's innovation (Firahi, 1394 SH, p. 111). Regarding the first type, i.e. *tamlīkiyya*, he writes, "in this type of government, the ruler – just like all individual owners – treats the country and the people as his own personal properties, regarding the country as belonging to him and letting himself to do any appropriations and seizure in people's lives and properties. He regards people as his servants, and even as sheep and cattle created and conquered for his own desires." (Na'ini, 1390 SH, p. 417). Na'ini calls the second type of government *wilāyatiyya*. *Wilāyat* (i.e. authority) is a deep-rooted and rich concept in Shiite jurisprudence. Na'ini divides *wilāyatiyya* government into two types. The first type is the one whose foundation is truth, which is the government of Infallible Imam. In this type of government, the infallibility of the ruler as an internal factor hinders emergence of error and disobedience on the part of ruling system, and not only does people lack the right to choose the infallible as their ruler, but also have no right to supervise him to protect him and his government against error and disobedience. Of course, this does not mean negation of people's volition in the Infallible's authoritative government; rather, people will legally have the right to participate in the political power through a certain mechanism. This is because under the Prophet and Imam Ali (PBUT), people had the right to consult, enjoin good and forbid evil, and supervise the statesmen, and they themselves would encourage people

to do that (Vara'i, 1383 SH, p. 46). This type of government is close to Akhound's legitimate government. Of course, these statements are more theoretical than practical, because Na'ini believes that in the period of Imam Mahdi's major occultation, establishing this type of government is not possible. Thus, in the existing conditions, people must seek to establish a government that is not – at least – founded on despotism (Nouri, 1381 SH, p. 133). Since we are far from this type of government in the occultation period, he goes to the second type of authoritative government and says, "The reality of this type of sultanate is authority in performing duties regarding order and protecting the country. It is not possession; rather, it is a typical trust in spending the country's forces, not in one's passions. This is because the amount of the king's dominance in proportion to authority over the aforementioned affairs will be limited and his appropriation – whether legitimate or through usurpation – will be in proportion to that limit of constitutionalism. All members of the nation share with the sultan their financial and non-financial affairs from the typical forces; and their relations to those affairs are equal, and they are all managers of affairs. They are all trustees, not owners, and are – like other members – responsible for that, and will be reprimanded for any little transgression" (Na'ini, 1380 SH, p. 419).

5-1. The duties of authoritative government

According to Na'ini, in the authoritative government, the government has authority for performing the duties pertaining to preserving order and protecting the country, not ownership. And the government is a typical trust that must be spent for the forces of the country, not for the ruler's passionate desires (Na'ini, 1380 SH, p. 38). He believes that the foundation of authoritative sultanate is not ownership and coercion. And the foundation of sultanate is just founded on establishment of those very duties and typical benefits, and the

sultan's dominance is also limited (Na'ini, 1380 SH, p. 27). Na'ini's statement that government is a typical trusteeship and even usurping nature of the government does not ruin this foundation is an important point.

In his deep statement, the reality of this type of sultanate is authority and trust and it must not transgress or neglect its duties; and for preventing it to become absolute ownership, it needs accounting, meditation and complete responsibility; and the best way for it is infallibility. But since we have no access to infallibility in the occultation period, we must search for another way (Na'ini, 1380 SH, p. 29). Of course, in the absence of an Infallible leader, there may be – rarely – a just sultan who establishes justice. Na'ini mentions Anoushirvan's sultanate as an example. Of course, as he says, even Anoushirvan chose a person such as Bozorgmehr as a supervisor to oversee his actions and establish accounting and responsibility. However, since these individuals and such governments are very rare, they are better not to be used as a basis (Na'ini, 1380 SH, p. 29). Now, what must we do in a normal government – as most of governments are? He offers two solutions for this issue: first, the participation of and equality between the members of nation and the king, and second, closing the doors of despotism as well as nation's freedom. Besides, he believes that there must be two institutions for this purpose: constitutional law and assembly as some supervisors on government (Na'ini, 1380 SH, pp. 30-31). Na'ini believes that just if the affairs are supervised by the nation's representatives and they are controlled by individual members of the society, we can prevent turning authority into ownership as the foundation of the government (Na'ini, 1380 SH, p. 31). This is because Na'ini believes that external supervision on the ruler is prior to reliance on the internal hindering force. According to him, the authoritative government is founded on two principles of 'freedom' and 'equality', and preserving the limitation is also dependent on the

constitutional law and the National Assembly (Na'ini, 1380 SH, p. 86). In this way, the government favored by Na'ini is very limited and he designs some precise tools for its limitation.

5-2. The scope of latitude in the possessive government

Unlike the authoritative government that is limited in its scope of duties due to its foundation on authority, the possessive government has no such limitations. The point worth mentioning here is that 'since this government is absolute and despotic, and there is no limit for the agents, putting it under the title of government is defective. Thus, one can use the scope of latitude of government's power. In other words, Na'ini wants to show that in this type of government, one cannot delineate duties for the government, because this type of government interferes in all affairs. In his precise statements, "the reality of the possessive sultanate is usurping and arbitrary orders", and its basis is founded on ownership. Therefore, the government regards the country as its own property and considers its people created and conquered for its own passionate desires. In this government, people are of two groups. The first group consists of the flatterers of the government. Anyone who is regarded in line with the government's goals is made an associate of the government. The second group consists of those who are not to obey the government. They are sent to exile or executed, and their flesh is given to dogs as food, or the bloodthirsty wolves are encouraged to shed their bloods and plunder their properties. Everything this ruler wishes he takes it from its owner and grants to his associates and looters. Interestingly, he takes the taxes like his own rental property and his personal estate, spending it for whatever he wants (Na'ini, 1380 SH, p. 25). Na'ini believes that the nation involved in such captivity and living under such abjection are captivated, degraded and enslaved. And since they are – like orphans and minors – unaware of their usurped properties, they are also called

mustaṣghirīn (i.e. those who have become minors). It is as if they have been created just to fulfill the needs of others (Na'ini, 1380 SH, p. 26). Na'ini believes that in this type of government, there are various degrees defined in view of the knowledge and ignorance of the people as to the sultanate's duties and their own rights, and its highest level is the point wherein the ruler claims to be God, just as Pharaoh did (Na'ini, 1380 SH, p. 26).

Na'ini believes in that type of government, despotism infiltrates into all aspects of human life, and – as demanded by the saying 'people are followers of their rulers' religion' – people's behavior with their subordinates is like sultan's behavior with all people (Na'ini, 1380 SH, p. 27). That is, all upper-handed persons treat their subordinate individuals just as their ruler does to his subjects. Na'ini believes that the principle of this vile tree of despotism returns to the nation's ignorance of the sultan's duties and typical common rights, and the consolidation of such a government and such a ruler returns to the non-responsibility and no control and accounting (Na'ini, 1380 SH, p. 27). No responsibility is the main point of the despotic government and he ruler is not ready to accept any responsibility.

Na'ini divides the possessive and despotic government into two types: political and religious (Na'ini, 1380 SH, p. 40). The origin of the first type is 'possessing bodies' and the second type is 'possessing hearts' (Firahi, 1394 SH, p. 171). Na'ini is always sorrowful that how some misuse religion to establish despotism. He says, "I'm so sorry and puzzled how unaware the oppression-centered of the age and the ignorant of the religious despotism are of the arguments of the Quran and Sunnah as well as the Shari'a and the way of life of their Prophet and Imams" (Na'ini, 1380 SH, p. 76). According to him, the man-eating wolves did not find any resort better than religion for surviving the vile tree of oppression and despotism, and they applied Pharaoh's cursed tradition that 'I'm afraid he may change your religion', renewing the vicious

actions of Zahhak and Genghis, calling them pious actions, not caring about polluting religion with disgrace. (Na'ini, 1380 SH, p. 17). Even the title of the book refers to these individuals. According to him, this treatise is for awakening and drawing attentions to necessities of *shari'a* and purifying the nation from the polytheism and heresy that regard Islam equal to despotism (Na'ini, 1380 SH, p. 18).

5-3. Difference of these two types of government

Na'ini believes that these two types of government are different from one another in their reality and distinctive in their consequences (Na'ini, 1380 SH, p. 27), because the foundation of the possessive government is exerting force and conquering the country and its people (Na'ini, 1380 SH, p. 27) and the foundation of authoritative government is trust. For explaining the difference between these two types of government, Na'ini goes to the phrase 'truth of sultanate' and writes, 'the truth of possessive sultanate is usurping people's rights under arbitrary orders. On the contrary, the truth of the authoritative sultanate is authority over performing duties pertaining to order and preserving country, not possession; and this government is a typical trust in spending the forces of the country – which are the typical forces – in these items, not for passionate lusts. Besides the level of sultan's dominance is limited, whether it is legitimate or taken by usurpation. The members of the nation share with sultan in financial and other affairs in the typical faculties; and their shares are all equal. And the officials are all trusted persons, and are responsible for doing their duties. If they transgress, they will be upbraided.' (Na'ini, 1380 SH, p. 28). The authoritative government is founded on freedom from captivity and slavery (Na'ini, 1380 SH, p. 86). Na'ini believes that sultanate in Islam is essentially authoritative; however, throughout history, the Islamic sultanate has changed from authoritative into possessive (Na'ini, 1380 SH, p. 35).

According to the Shiite thought, Na'ini believes that in the time of Infallible Imam's occultation, there is some kind of usurpation in all types of government. The best type of usurped government is constitutional government, which is better than the absolute sultanate, because there is just one usurpation – that of the Infallible Imam's political authority – in it. But in the despotic government, there are three usurpations (i.e. usurpation of divine governance, usurpation of the Infallible's governance, and usurpation of people's governance) (Na'ini, 1380 SH, p. 40). Therefore, according to the rule "rebuffing the most corrupted with the corrupted", he declares that the authoritative sultanate is legitimate out of necessity. In his favorite government, enforcing the ruler's power is conditional on not transgressing from the limits, there is no double oppression, and the representatives selected by people act against the despotic persons' interests and resist against their arbitrariness (Torabipoor, 1391 SH, p. 98).

6. People's role in performing the duties of the government

In the next step, Na'ini deals with the relationship between people and government, and investigates how people can play their role in leading the government towards performing its main duties. One of Na'ini's interesting statements is a reference to British government's oppressions in India and Islamic lands, while it is a good government in its own land. Na'ini writes, the British government is consultative in relation to its own people, because they are quite awake. But it is despotic towards Hindus and Muslims because they are insensitive and captivated; just like Pharaoh who acted deliberately in relation to Copts and lordly in relation to children of Israel (Na'ini, 1380 SH, p. 57). This is an important point. Here, Na'ini wants to refer to people's role in the nature and duties of the governments. Everywhere people enjoy a high level of awareness, the government acts responsibly; but wherever people are seen as tools and play no role in administering

the country or have no supervision over the ruler, the government goes towards being possessive. In this way, Na'ini gives an important role to people and considers them involved in the fact that whether the government performs its duties or not. When Na'ini speaks of despotism and reasons for its emergence, he considers its first reason to be the nation's ignorance and unawareness of the sultan's duties and their own rights (Na'ini, 1380 SH, p. 131). In other words, if people know what the duties of the government are, they will not allow it to be absolute and despotic. When he refers to the ways of going out of despotism, he mentions resolving the nation's ignorance as the first one (Na'ini, 1380 SH, p. 147).

He believes that all people have the right to supervise the government both due to the fact that the Islamic sultanate is deliberative and due to the tax they pay for various affairs (Na'ini, 1380 SH, p. 98). This tradition is the continuation of Akhound's view who believed that in the occultation period, all religiously qualified persons must play their role in protecting the country and preserve the order of the Islamic lands through consultation among the wise men and "people of loosening and binding" (ahl ḥill wa 'aql) (Khorasani, 1385 SH, p. 32). Generally, in the writings of Qajar period and before, people had no role in establishing the government and they were asked just to obey the ruler. The rulers also would be given some pieces of advice as to observe the subjects in the tradition of *andarznāma* (literally, 'letters of advice') (Yavari, 1397 SH; Moradi Tadi, 1387 SH). But in the Qajar period, especially the end of it, a difference emerged and people were no longer just subjects and subordinates.

What will be people's duty if the ruler refrains from doing his duties? Na'ini explains this under the discussion on 'enjoining good and forbidding evil', and puts forward two states: first, it is a definite obligation to rebuff him, and every person in the society has an independent duty to expel that ruler (Na'ini, 1380 SH, p. 65). The second

state is when he cannot be expelled for any reason. Using the concept of ‘usurpation’, Na’ini writes, ‘if a usurper does the usurpation by force and he cannot be rebuffed, people can appoint some supervisors to limit his appropriations and preserve the usurped property from being wasted.’ (Na’ini, 1380 SH, p. 66).

As to the government, the usurping ruler must be limited by constitutional law and formation of Assembly. Na’ini uses two concepts of *waqf* (endowment) and *ghaṣb* (usurpation) in the Shiite jurisprudence precisely. In his view, the government is an endowed property with a definite guardian. In the abovementioned government, a usurper has usurped the endowed property and people cannot hinder his actions. Here, they must appoint a trustee. This has precedents in endowments. Undoubtedly, when Na’ini put forward this idea, there was no idea of rioting against the government and overthrowing it, and Na’ini would attempt to create a standard and a foundation – in the framework of the Shiite thought – for permitting to overthrow governments. But since the dominant view in the Islamic thought would not allow this, Na’ini also could not issue such a decree and attempted to find a middle way. Elsewhere, however, Na’ini refers to deposing the ruler and says, ‘exiting the duty of guarding and trusteeship is treachery, and leads to deposing the ruler forever’ (Na’ini, 1380 SH, p. 30).

All throughout the discussion on investigating the duties of the government and its various types, Na’ini refers to the Islamic contracts. Explaining Na’ini’s uses of Islamic contracts in illustrating government needs writing an independent article; and here, we mention it just for its relation to the discussion. The duties of government will change if we consider the foundation of government to be authority, usurpation, ownership, endowment, or trust. One of the key concepts in Na’ini’s thought that he brings from the sphere of private jurisprudence into the sphere of public law and public thought

is the concept of 'trust'. In an important statement not much attended by his expositors, Na'ini writes, 'for any *shari'a* (religious law) or even for any wise man, sultanate – whether it is legitimate or taken by usurpation – is a typical trusteeship and authority over order and preserving and performing other duties pertaining to wardenship, not through force, possession, and governmental arbitrariness.' (Na'ini, 1380 SH, p. 55). He believes that no matter sultanate is usurped or taken legitimately, its foundation is on 'trust'. It must be noted that here he means authoritative government, because the possessive government is founded on ownership, not authority or trust; and Na'ini is severely opposing that type of government. For understanding this fact, he uses the example of guardianship of the endowed property wherein the guardian cannot have arbitrary possession or personal appropriation (Na'ini, 1380 SH, p. 55). Elsewhere, he mentions the truth of sultanate and emphasizes that the foundation of government is 'trust', and we must not allow its foundation to be turned into possession (Na'ini, 1380 SH, p. 29). Elsewhere, he says more explicitly that the foundation of constitutionalism, even if not believing in the constructor, is freedom from that bondage (Na'ini, 1380 SH, p. 86). Thus, neither usurpation nor disbelief in God ruins the 'trust' foundation of government (Firahi, 1394 SH, p. 199).

Conclusion

The duties of government and its scope are among the important discussions of political and legal thought. We may claim that this very scope specifies the nature and function of the state. In the classic thought, the government attempts to lead people to felicity and most discussions are focused on who must be the ruler and what characteristics he must have. In the new era and with the emergence of modern state, the look at government, state and their duties altered. In the modern era, numerous theories were offered in this regard, and

various ideas – ranging from the broad state to limited and even minimal state – were experienced. Na’ini lived in an era when Iranians stood in the threshold of entering the modern world, and he would attempt to theorize in this regard by relying on the rich heritage of the Shiite thought as well as the requirements of the modern world. He stood in the middle point between the old and the modern worlds and made use of both. This article dealt with his view of the government’s duties. Na’ini’s risky position between tradition and modernity, and his stand on the threshold is among the strange points of his thought that makes understanding his statements difficult. As an aware guard of tradition, he would attempt to understand standing at the threshold of modern world. Thus, he would sometimes have disruptions from the traditional thought. For instance, in one of those disruptions from the traditional thought, neither has he referred to the characteristics of the ruler, nor has he stated that the government is seeking to lead individuals to felicity. Just as the previous scholars, he considers government as a necessity in human life and uses the phrase ‘truth of sultanate’ in an effort to explain the philosophy of government. By expanding the concepts of private jurisprudence into the sphere of public jurisprudence, he tries to establish a link between the old and modern, and to explain the philosophy of government and its duties by using concepts such as authority, trust and endowment in opposition to concepts such as ownership and usurpation. The government he considers is a limited one with minimal duties, and he shows this in a distinction between the authoritative and possessive types of government. Similarly, Na’ini shows that people have an important role in the fact that the government may perform its duties or evade doing them.

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